STATE OF MICHIGAN

COURT OF APPEALS

HIGHLAND PARK POLICEMEN & FIREMEN RETIREMENT SYSTEM,

Plaintiff/Counterdefendant-Appellee,

and

HIGHLAND PARK RETIRED POLICE & FIREMEN ASSOCIATION,

Intervening Plaintiff,

and

CHARLES HARPER,

Intervening Plaintiff-Appellant,

v

CITY OF HIGHLAND PARK, HIGHLAND PARK FINANCE DIRECTOR, HIGHLAND PARK TREASURER, HIGHLAND PARK CITY CLERK and HIGHLAND PARK CITY COUNSEL,

Defendants-Appellees,

and

HIGHLAND PARK EMERGENCY FINANCIAL MANAGER,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
June 22, 2006

No. 252424
Wayne Circuit Court
LC No. 02-242359-CZ

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Intervening plaintiff Charles Harper appeals as of right the circuit court's determination that annual two-percent benefit increases over eight years, which defendant City agreed to pay in a promissory note entered into with plaintiff Retirement System in 1994, would revert at the expiration of the agreement to the benefit level existing in June 1996. Intervening plaintiff also challenges the circuit court's denial of his motions for intervention and for class certification. We affirm.

Intervening plaintiff contends that the trial court erred in ruling that, following the conclusion of the eight-year term of the promissory note, the benefits for members of plaintiff would revert to their pre-promissory-note level. Thus, the major issue in this case is whether the base pension amount was to be frozen at the amount in effect after eight years of two-percent increases, or whether the benefit level was to revert to the amount in effect when the promissory note was signed.

We review de novo a trial court's grant of summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The interpretation of a contract is a question of law that is also reviewed de novo on appeal. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997). "If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Id.* at 722. The promissory note, which comprises the agreement of the parties, states:

> In lieu of the fact that the Maker of this loan has not fulfilled its agreement to pay the proposed interest rate . . . on the outstanding loan to the retirement system, the Holder requires the Maker to grant the Police and Fire Retirement System a 2% increase in pension benefits for 8 years based upon the pension payroll, in which such period will begin July 1, 1996.
>
> This promissory note is contingent on the City agreeing to pay a 2% increase to the retirees benefit for 8 years and will not take effect until this provision providing for a 2% increase in pension benefits is granted by the Maker.

Contrary to intervening plaintiff's assertion, the silence of the note regarding the maintenance of the increased benefit level does not create an ambiguity.

It is well settled that the language of a contract must be construed in accordance with its plain and ordinary meaning, and constrained or technical interpretations are to be avoided. *UAW-GM Human Resource Ct v KSL Recreation Corp*, 228 Mich App 486, 491-492; 579 NW2d 411 (1998). A contract is ambiguous only if it is susceptible to two or more reasonable interpretations. *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984). We will not look to extrinsic evidence to determine the parties' intent when the words of a contract are clear and unambiguous. *UAW-GM Human Resources Ctr*, *supra* at 491.

Here, the language of the promissory note is clear, unambiguously requiring the provision of two-percent benefit increases to retirees for a defined period of eight years. Intervening plaintiff fails to identify any language within the promissory note implying either a continuation or maintenance of the increased benefit levels. Because the promissory note clearly contemplates annual two-percent increases for only eight years, the trial court correctly ruled that the benefit amount would revert to the pre-note level at the expiration of the agreement.

Intervening plaintiff incorrectly asserts that MCL 38.556d takes precedence over the contract language and imposes a continuation or maintenance of the last benefit level attained. MCL 38.556d provides in relevant part:

> A municipality, by ordinance or in another manner provided by law, may adopt from time to time benefit programs providing for postretirement adjustments increasing retirement benefits.

"If statutory language is unambiguous, it is generally presumed that the Legislature intended the plainly expressed meaning, and a court must enforce the statute as written." *Computer Network, Inc v AM General Corp*, 265 Mich App 309, 327; 696 NW2d 49 (2005). The City did not enact an "ordinance" or "adopt . . . [a] benefit program[]." Instead, the City merely engaged in a financial transaction with plaintiff, which in lieu of requiring interest, bestowed a temporary benefit on its retiree members. As such, the execution of the promissory note is not the type of enactment or program contemplated by the statute. In fact, the payments received by plaintiff's members are more akin to the computation of interest liability for supplemental benefits addressed in MCL 38.572, which specifically denies the creation of "a liability for their continuance."

Intervening plaintiff also erroneously suggests that the promissory note should be construed in the same manner as a prior agreement between the parties. Intervening plaintiff contends that the 1986 agreement, which was initiated in response to closing of the retirement system upon restructuring of the police and fire departments, indicates an intent of the parties to retain the last benefit-level increase. However, this Court is precluded from looking to extrinsic evidence to determine the intent of the parties given the clear language of the promissory note. The 1986 agreement is distinguishable, both with respect to the circumstances of its inception and its content. The 1986 agreement was initiated to create a mechanism to provide plaintiff's members with periodic benefit increases, which were previously enjoyed but eliminated through the discontinuation of separate fire and police departments. Further, the 1986 agreement specifically indicated that although the increases were limited to an eight-year period, they were "compounded" and would "forever cease," implying that the final benefit rate would be maintained. This earlier agreement was clearly the adoption of a benefit program. It was not, as compared to the promissory note in this case, merely an ancillary provision to a loan agreement.

Finally, the City and Highland Park Emergency Financial Manager ("defendants") argue that the promissory note is illegal and unenforceable because it was not signed by specified city officials and because it was not pre-approved by state authorities. However, this argument is unconvincing. It is telling that defendants seek to render the agreement illegal, and consequently void, after the City has already received the benefit of the bargain.

Highland Park Charter, ch 14, § 14-1 provides:

> The power to make contracts on behalf of the City is vested in the Council. All contracts . . . shall be authorized by the Council and shall be signed on behalf of the City by the Mayor and the Clerk.

Defendants do not dispute that the City Council approved the promissory note. However, they assert that because the proper officials did not sign the agreement, the agreement is invalid. We disagree. A municipality is estopped from denying liability for services or goods it has obtained, after accepting the benefits of their receipt, by asserting an ultra vires defense, if the service or goods are within the municipality's power to procure and not illegal in nature, even if the municipality's power has been exercised in an irregular fashion to secure the goods or services. *Parker v Twp of West Bloomfield*, 60 Mich App 583, 591-599; 231 NW2d 424 (1975). We conclude that having received the benefit of the bargain, defendants are estopped from asserting that the promissory note is illegal when, given the circumstances of the case, their acts "have created a situation where it would be inequitable and unjust to permit [them] to deny what [they have] done or permitted to be done." *Id.* at 592.

In light of our resolution of this case, we need not address the trial court's denial of intervening plaintiff's motions for intervention and class certification.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder